

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

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|--|--|--|--|
| United States District Court | | District OF GUAM | |
| Name (under which you were convicted): JULIA H. HEACOCK | | Docket or Case No.: CR-11-00058-003 | |
| Place of Confinement: FEDERAL MEDICAL CENTER - CARSWELL | | Prisoner No.: 03250-093 | |
| UNITED STATES OF AMERICA | | Movant (include name under which convicted) V. JULIA H. HEACOCK | |

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:
United States Courthouse
520 West Soledad Avenue - 4th Floor
Hagatna, GU 96910-4950

- (b) Criminal docket or case number (if you know): CR-11-00058-003 & 1:15-cr-00015-001

2. (a) Date of the judgment of conviction (if you know): UNKNOWN
- (b) Date of sentencing: December 5th, 2016

3. Length of sentence: 36 Months for case cr-11-00058-003 & 21 Months on case # 1:15cr00015001

4. Nature of crime (all counts):
Violation of 21 USC § 841(a)(1)&(b)(1)(C)
Violation of 18 USC § 3147

FILED
DISTRICT COURT OF GUAM

DEC 11 2017 ✓

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

- (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

N/A

JEANNE G. QUINATA
CLERK OF COURT

6. If you went to trial, what kind of trial did you have? (Check one) N/A Jury ☐ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ N/A No ☐

8. Did you appeal from the judgment of conviction? Yes ☐ No ☒

9. If you did appeal, answer the following:

N/A

- (a) Name of court: _____
- (b) Docket or case number (if you know): _____
- (c) Result: _____
- (d) Date of result (if you know): _____
- (e) Citation to the case (if you know): _____
- (f) Grounds raised: _____

N/A

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐

No ☐

If "Yes," answer the following:

N/A

- (1) Docket or case number (if you know): _____
- (2) Result: _____
- (3) Date of result (if you know): _____
- (4) Citation to the case (if you know): _____
- (5) Grounds raised: _____

N/A

N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐

No ☐

N/A

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: _____
- (2) Docket or case number (if you know): _____
- (3) Date of filing (if you know): _____
- (4) Nature of the proceeding: _____
- (5) Grounds raised: _____

N/A

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐No ☐

N/A

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

N/A

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐No ☐

N/A

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application? N/A

(1) First petition:

Yes ☐No ☐

(2) Second petition:

Yes ☐No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

-
12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE: Violation of Movant's Sixth Amendment Right to Effective Assistance
of counsel**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Movant's Sixth Amendment right was violated when counsel failed to ensure that Movant's pronouncement at sentencing was accurate once Sentencing Court stated on record and for the record that Movant would receive time served that had not been credited to Movant. As the professional, counsel should have known that the Bureau of Prisons would not adjust Movant sentence once movant was placed in the custody of the Bureau of Prisons. The only way movant would receive the credit for time that had been served prior to sentencing or prior to a previous prison term served and person now on supervised release, not pre-trial release would be for the Sentencing Court to do the calculation by reducing term of imprisonment on record by reducing the time imposed by the time being credited and pro- the prison term minus the time credit for the actual term of imprisonment to be honored by the Bureau of Prisons. But for Counsel's unprofessionalism, movant's term of incarceration to be served consecutively with 11-00058-003 would be less than the 36 months imposed, if time was calculated correctly at sentencing.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Did not do direct appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

N/A

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

N/A

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND TWO: Violation of Movant's 5th Amendment Right to due process

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Movant's due process right pursuant to the 5th Amendment was violated when movant's term of imprisonment was calculated incorrectly once the Court pronounced at Sentencing Hearing that movant would have time served applied to the term of imprisonment for count 1. The term to be served consecutively should have been been reduced from the 36 months that it has been applied to. This is a violation of movant's Fifth Amendment Right to due process.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Did not file direct appeal

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

N/A

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): N/A

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): N/A

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND THREE: The Sentencing Court committed Reversible Error when it sentenced
movant prior to deducting time credited to term of prison imposed.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

This error is reversible because it is a mistake that affects the movant's right(s) to due process and therefore it is grounds for reversal, and correction to movant's Judgment and Commitment Order that is currently being applied to movant's "order" of incarceration.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Did not file direct appeal

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

N/A

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

N/A

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

N/A

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND FOUR:

N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ N/A

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐ N/A

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

N/A

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing:

David J. Lujan

(b) At the arraignment and plea:

David J. Lujan

(c) At the trial:

N/A

(d) At sentencing:

David J. Lujan

(e) On appeal:

N/A

(f) In any post-conviction proceeding:

Pro se

(g) On appeal from any ruling against you in a post-conviction proceeding:

Pro se

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒ Movant Sentenced on Information

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒ N/A

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

N/A

N/A

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

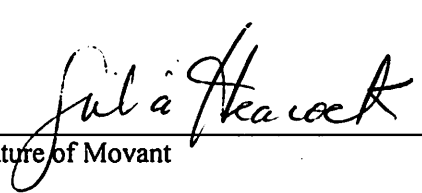
Therefore, movant asks that the Court grant the following relief: to correct current sentence as to count one by reducing term of imprisonment by time to be credited to then be served in a consecutive manner to 1:15cr00015-001, term of imprisonment of 21 months for a combined term of imprisonment of less than 57 month term of imprisonment that is currently being or any other relief to which movant may be entitled. served.

N/A

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on December 4, 2017
(month, date, year)

Executed (signed) on December 4, 2017 (date)


Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

N/A